IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 826 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALAJI SURA KOLI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR G RAMAKRISHNAN for Appellant(s) : 1,
MS HANSA PUNANI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/11/2007

ORAL JUDGMENT

1. This appeal has been filed by the original accused challenging a judgement and order dated 9.11.1989 passed by the learned Additional Sessions Judge, Surendranagar.

2. The appellant was accused no.1. Against the

appellant and three other persons, a complaint came to be lodged of having fired gunshots at certain persons on 21.9.1987 causing grievous injuries. Pursuant to the complaint, investigation was carried out. The Investigating Agency upon completion of the investigation filed charge-sheet against all the accused. The Sessions Court framed the charge at exh.3 stating inter-alia that at 3:00 am on 21.9.1987 when Surabhai Ramsinh, Samant Vashram, Sava Vashram etc. were grazing their cattle, the accused carrying long barrel gun had quarreled about the grazing of the cattle and the accused no.1 with intention to commit murder fired gunshot at Samant Vashrambai which caused injury to him on the back side. On account of these grievous injury, he fell down and other accused persons also fired gunshots causing injuries to Sava Vashram, Pola Vashram, Rupa Samla, etc. It was therefore, alleged that the accused persons had committed offences punishable under Section 307 read with Section 34 of the Indian Penal Code. They were also charged with having committed offence punishable under Section 25(1)(A)of the Arms Act.

3. The prosecution in order to prove the charge, examined several witnesses including the complainant and other eye-witnesses. Dr. Bimal Narendrai Buch was examined to prove the injuries on Samant Vashrambhai and the treatment

given to him. Fire-arm was also recovered from the appellant-accused no.1. Upon conclusion of the trial, learned Additional Sessions Judge was pleased to acquit rest of the accused. He was however, pleased to convict the appellant herein for offence punishable under Section 326 of the Indian Penal Code and sentenced him to rigorous imprisonment for a period of six months and fine of Rs. 1,000/-.

4. Since we are concerned with the conviction of the appellant, it would be necessary to discuss the evidence against the appellant alone and ignore the statements of the witnesses against other accused persons.

5. The complainant-PW4 was examined at exh.26. In his deposition, he has stated that on the date of incident, he along with other persons had gone out for grazing their cattle. At about 3 O' Clock in the morning, when he was walking with his cattle and others namely Samantbhai, Savabhai and Rupabhai were in front of him with their cattle, there was a commotion. The accused were present there. The appellant accused no.1 was carrying a gun. He fired on Samant Vashrambhai causing injury on his back.

6. Samantbhai Vashrambhai-PW5 was examined at exh. 29. In his deposition, he has stated that on the date of incident at about 3 O' Clock in the

morning, when he along with other persons was passing by the grazing land called “Ghodia”, at which time the accused persons were driving out some stray cattle and told them that stray cattle belongs to the witnesses and his companion which they denied at which time the appellant who was carrying a gun lifted it and therefore, the witnesses started running. The gunshot fired, hit him on the lower back. He was first taken to Chotila Hospital in a tempo. However, since the Doctor there was on leave, he was taken to Rajkot where he remained in the hospital for 17 to 18 days. His blood soiled clothes were collected there.

7. Savabhai Vashrambhai-PW6 was examined at exh.32. In his deposition also, he has stated that on the date of incident when they were grazing their cattle, the accused persons came there with stray cattle and said that stray cattle belongs to them which the witnesses and others denied, upon which, the appellant fired at Samant Vashrambhai. As Samant Vashrambhai tried to run away, he was hit on his lower back.

8. Pola Somabhai-PW7 was examined at exh.33. In his deposition he has stated that on the date of incident at about 3 O' Clock in the morning when they were grazing the cattle, the accused came driving out the stray cattle. The appellant and Rudha Manji had guns with them. They had

quarreled about the stray cattle. Samant Vashrambhai started running out of fear. The appellant fired gunshot injuring him on the lower back.

9. Rupa Samla-PW8 was examined at exh.34. In his deposition, he has narrated the incident in the similar fashion. He also stated that the appellant had fired a gunshot at Samant Vashrambhai and the bullet hit him on the lower back.

10. Dr. Bimal Narendrai Buch-PW2 was examined at exh.12. He was the Medical Officer at Rajkot Government Hospital. He stated that on 21.9.1987 injured Samant Vashrambhai and other injured persons were brought to that hospital and had given history of being injured by gunshot firing. He stated that Samant Vashrambhai had received a bullet injury on the side of the lower back close to second Vertebra. The X-ray revealed presence of several substances like small pallets. Upon operation, it was found that there was a large hole in the small intestine. On the surface of the intestine, there were multiple injuries. From the cavity of the stomach, pallets were taken out and handed over to the police. The patient was discharged from the hospital on 5.10.1987. According to his opinion, injury could have been caused by gunshot firing. He also produced injury

certificate at exh.13 certifying that Samant Vashrambhai had received gunshot wound of ½ inch in diameter on right of L2 vertebra and had a charring around wound of about ¾ inch. Certificate also stated that X-ray of the abdomen showed multiple pallets. The patient was admitted in the hospital on 21.9.1987 and discharged on 5.10.1987.

11. The prosecution has examined Shri Dharmendrasinh Gohil-PW12 who was IO at exh.60 to prove the nature of investigation carried out.

12. From the evidence on record and after having heard the learned advocates appearing for the parties, I am of the opinion that the trial Court committed no error in holding that the appellant had caused the bullet injury to Samant Vashrambhai and had thereby caused grievous injury.

13. As already noted, there were as many as four eye-witnesses who had given consistent disclosures of the events. Apparently, the complainant and his other companion had gone out for grazing the cattle where upon they had a quarrel with the accused regarding certain cattle grazing in the grazing land leased by the accused. In the ensuing quarrel, accused no.1-appellant herein fired a gunshot from the

country-made gun which he was carrying. The gunshot hit Samant Vashrambhai on his lower back causing multiple bullet injury. Though there are certain minor contradictions in the cross examination brought forth by the defence insofar as presence of appellant no.1, the fact that he was carrying a gun with him and that he had fired from his gun causing grievous injury to Samant Vashrambhai, there is no material contradiction.

14. The version of the eye-witnesses is corroborated by contemporaneous evidence in the form of medical evidence given by the Doctor. Doctor also stated that that Samant Vashrambhai was brought to Rajkot hospital on 21.9.1987. He was carrying bullet injury on his back. He had to be operated since several pallets were inside the body. The bullet had caused extensive damage to his intestine. The Doctor also produced medical certificate of the injury of the injured witness. It was established that he had to be hospitalized for a period from 21.9.1987 to 5.10.1987.

15. Additionally, the gun was also recovered from the appellant an the blood soiled clothes of the injured witness were seized by the police. FSL report of the clothes also confirmed the presence of human blood.

16. Presence of the appellant and his involvement in firing from his gun and causing grievous injury to Samant Vashrambhai therefore, was fully established.

17. Though it was contended before this Court that the appellant hand fired for self defence, no such defence was taken in emphatic manner before the trial Court. Upon reading the cross examination of the witnesses, it cannot be stated that the appellant had established exercising the right of self defence. Though the cross complaint was produced at exh. 61 and was sought to be relied upon to show that they there were cross cases, significantly, the complaint exh. 61 came to be lodged on 23.9.1987 where according to the complainant therein, the incident had taken place at the midnight of 20.9.1987. In the statement under Section 313 of the Criminal Procedure Code also the appellant has not sought to explain the conduct so as to inspire any confidence in the theory of self defence. Considering all these aspects of the matter, I do not find that the appellant can be given benefit of self defence.

18. In the result, appeal fails. Same is hereby dismissed. Bail cancelled.

(Akil Kureshi,J.)

(raghu)